

Internal Revenue Service

Department of the Treasury

District .
Director

Date:

Person to Contact:

Telephone Number:

Refer Reply To:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates you were incorporated as a non-stock non-profit corporation in the State of [REDACTED] on [REDACTED]. The name of the organization is [REDACTED].

The Third Article indicates: "Said corporation is organized exclusively for charitable, religious, education, and scientific purposes, including, for purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or corresponding provisions of any future United States Internal Revenue Law)...."

Your Mission Statement from the [REDACTED] Business Plan provides: "...to assist adult persons with mental and emotional challenges in achieving his/her potential in productive work and expression of self and doing so in an environment conducive to the development of the total person, physical, spiritual and mental."

You provide a Supervised Living Environment to adults with mental and emotional challenges, providing them training, education, and evaluation based on individual needs.

In a letter dated [REDACTED], signed by [REDACTED], President, the following statements are made:

[REDACTED]

[REDACTED] and his wife, [REDACTED], are both retiring and moving out of town as soon as their home sells..."

[REDACTED] is my business partner in behalf of our two sons for whom we are developing this group home."

"[REDACTED] needs this home to live in when his parents leave town."

In an undated letter requesting expedite processing, signed by [REDACTED] and received by FAX at 1:50 PM January 7, 1993, you state:

"The urgency lies in the fact that [REDACTED]'s son, [REDACTED], needs to have this home to live in immediately. The [REDACTED]'s are retiring and moving out of state [REDACTED] and [REDACTED] cannot be moved out of this community. He is working full time for the first time in his life and cannot live without support..."

In describing the home's residential facilities, residential capacity and the current number of members, you discuss: a 1 or 2 story, 3 bedroom, single dwelling or duplex; a house parent and 2 residents in a single dwelling and a house parent and 5 residents in a duplex. Currently, you have a 2 story with one house parent, and one resident, presumed to be [REDACTED].

Further, your [REDACTED] Business Plan, page 3, identifies two individuals who "...do not qualify for any other services in [REDACTED]..." or, "who need more services than they are able to get within the system..." The individuals identified are:

[REDACTED], son of [REDACTED], Chairperson and Secretary of [REDACTED].

[REDACTED], son of [REDACTED], President and Treasurer of [REDACTED].

In your letter dated January 20, 1993, you state that your goal is to serve the public, that you already have a waiting list of applicants who will be admitted by uniform criteria, and that [REDACTED] currently resides in a MHMR community living program. You also state that if medicaid and community living support should be cut from the [REDACTED] budget, he will apply for admission to [REDACTED].

Section 501(c)(3) of the Code provides exemption for:

[REDACTED]

"Corporations...organized and operated exclusively for religious, charitable...or educational purposes...no part of the net earnings of which inured to the benefit of any private shareholder or individual..."

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(c)(2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals."

(d)(1)(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."

In Wendy L. Parker Rehabilitation Foundation, Inc. v. C.I.R., T.C. Memo 1986-248, the Tax Court upheld the Service's position that a foundation formed to aid coma victims, including a family member of the founders, was not entitled to recognition of exemption. Approximately 30% of the organization's net income was expected to be distributed to aid the family coma victim. The Court found that the family coma victim was a substantial beneficiary of the foundation's funds. It also noted that such distributions relieved the family of the economic burden of providing medical and rehabilitation care of their family member and, therefore, constituted inurement to the benefit of private individuals.

In Carrie A. Maxwell Trust, Pasadena Methodist Foundation, Trustee v. Commissioner, United States Tax Court, 2 T.C.M. (CCH) 905, Carrie A. Maxwell entered into a trust agreement with the Pasadena Methodist Foundation, turning over to the Foundation \$100,000.00. The purpose of the trust was to aid Dr. Merle N. Smith, the retired pastor of the First Methodist Church of Pasadena, by providing for a retirement pension to Dr. Smith, and upon his death, to pay to his wife, if she survives him, 50% of the monthly pension being paid to Dr. Smith and continuing monthly payments through her lifetime. It was determined that this was not a charitable trust but was a private trust, serving private individuals.

[REDACTED]

Even though you will endeavor to provide for others, a substantial part of your income will provide services to children of your founders in a similar manner as the Wendy Parker case cited above. You currently have one house parent and one resident, [REDACTED], who receives 100% of the benefit of your services; if one additional resident is added, [REDACTED]'s portion is 50%, still considered to be substantial. If there were 5 residents, private benefit could be 20% to 40% if one or both children of the founders are included. As shown in the Wendy Parker case, the magnitude of private benefit in relation to the public benefit derived from the organization's activities, may preclude exemption under section 501(c)(3) of the Internal Revenue Code.

Based on the information submitted by your organization, we have determined that you are not operated exclusively for purposes described in section 501(c)(3) of the Internal Revenue Code because you provide or plan to provide services which benefit your founders and their family members. It is held that you are not entitled to exemption from Federal income tax under IRC section 501(c)(3) and, therefore, you are required to file Federal income tax returns on form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Code as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

[REDACTED]

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 8104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

[REDACTED]
District Director

Enclosure:
Publication 832
Form 6018